IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL W.P.NO.2462 OF 2005
IN
C.C.NO.262/MISC./2005

Mr.Kantilal Jadavbhai Koladia ..Petitioner

Vs.

Mr.Dilip Lalajibhai
Savaliya & Anr. ..Respondents

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Mr.G.R.Sharma i/b Girish Kulkarni Advocate for Petitioner
Mr.U.V.Nikam A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : OCTOBER 14, 2005

P.C.

1. Heard the learned advocate for the petitioner and the learned A.P.P. for the State.

2. The respondent no.1 had filed a complaint against the present petitioner under Sections 406 and 420 of IPC. The said complaint is numbered as C.C.No.262/Misc/2005 and it is pending before the learned Metropolitan Magistrate, 26th Court, Borivali, Mumbai. In the said case, by order dated

26.9.2005, the learned Magistrate sent complaint to the Police Station under Section 156(3) of Cr.P.C. This order of the learned Magistrate is impugned in the present writ petition.

3. The learned advocate for the petitioner has contended that on perusal of the entire complaint, it does not make out any offence against the petitioner and therefore, the complaint is liable to be quashed. It is submitted that the dispute is purely of civil nature and the complaint has been filed only with a view to harass the petitioner. Thus, it is submitted that the learned Magistrate ought not to have passed an order under Section 156(3) of Cr.P.C.

4. The Division Bench of this Court in the case of **B.S.Khatri (Co.) & Ors. Vs. State of Maharashtra and Anr. reported in 2004 (1) Bom.C.R. 424,** has observed in para 13 of the said decision that the order under Section 156(3) of Cr.P.C. can be revised by a Sessions judge or by this Court under Section 397 r.w. 401 of Code. Thus, it is observed that alternate remedy is available to the

petitioner. It is further held by the Division Bench in para 22 of the said decision that it is not therefore, open for the Court to decide as to whether averments in the complaint are reliable or genuine and whether cognizance is liable to be taken or not. It is the exclusive jurisdiction of the Magistrate trying the offence and not for the High Court to decide at such premature stage. Thus, in my view, looking to the fact that there is an alternate efficacious remedy available to the petitioner, the present writ petition need not be entertained.

5. Besides this, in my view, the petition is premature, there is no need to interfere at this stage as all that has been done by the learned Magistrate is to pass an order under Section 156(3) of Cr.P.C. The report that the police may file as a consequence of that order may disclose no offence therefore, the Magistrate may drop the complaint. In this view of the matter, to quash the order at this stage, would be unwarranted and premature. In case the report discloses possible commission of any offence, the Magistrate may decide to take

cognizance of the matter and issue process. The order of issuance of process can also be challenged.

6. The learned advocate for the petitioner has placed reliance on the following decisions:-
a) (1998) 7 SCC 698- Ashok Chaturvedi and Ors. Vs. Shitul H.Chanchani and Anr. b) (2000) 4 SCC 168 Hridaya Ranjan Prasad Verma and Ors. Vs. State of Bihar and Anr. c) 1980 Bom.C.R. Bomanji Kavasji Boman Behram and Ors. Vs. Mehernosh Minochar Mehta and Ors. & d) 1992 Cri.L.J. A.K.Khosla and Ors. Vs. T.S.Venketesan and Anr. (Cal.)

7. on perusal of the above decisions, it is noticed that none of the said decisions are on the point of quashing of an order under Section 156(3) of Cr.P.C. Whereas, there is a direct decision of the Division Bench of this Court in the case of B.S.Khatri (Supra) which is directly on that point. In the said decision, it is observed that a writ petition would not be maintainable in respect of an order passed by a Magistrate under Section 156(3) of Cr.P.C. as there is an alternate remedy of

challenging the order available to the petitioner.

8. In case the Investigating Agency is of the opinion that the custody of the petitioner is required, in such case the investigating agency shall give 72 hours notice to the petitioner, prior to his arrest. In case such notice is received by the petitioner, the petitioner to prefer necessary application before the concerned Sessions Court. Needless to say that if such an application is filed the concerned Sessions Judge shall dispose of the said application on merits.

9. With the above observations, writ petition is disposed of.

[SMT.V.K.TAHILRAMANI,J.]